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HOUSE BILL 1296

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING FOR PRIMARY JURISDICTION OF THE ATTORNEY GENERAL TO INVESTIGATE AND PROSECUTE CERTAIN CRIMES COMMITTED BY OFFICERS OF THE EXECUTIVE AND JUDICIAL DEPARTMENTS ELECTED ON A STATEWIDE BASIS; PROVIDING FOR CONCURRENT JURISDICTION FOR THE ATTORNEY GENERAL AND DISTRICT ATTORNEYS TO INVESTIGATE AND PROSECUTE CERTAIN CRIMES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 4-38-29 NMSA 1978 (being Laws 1897, Chapter 60, Section 15, as amended) is amended to read:

"4-38-29. LIABILITY FOR MONEY WRONGFULLY PAID OUT.~~---[See-  
155.]~~

A. Any county commissioner who shall vote to approve any account or order any money paid to any officer or individual, except as provided by law, ~~[shall be deemed]~~ is

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1 guilty of a misdemeanor and upon conviction thereof shall be  
2 fined in a sum not exceeding five hundred dollars [~~and~~] (\$500).  
3 The money [~~so~~] illegally ordered to be paid shall be recovered  
4 in a suit brought in the name of the county on [~~his~~] the  
5 commissioner's official bond.

6 B. The attorney general and the district attorney  
7 in the county of jurisdiction have concurrent jurisdiction to  
8 enforce the provisions of this section."

9 Section 2. Section 6-6-10 NMSA 1978 (being Laws 1941,  
10 Chapter 190, Section 5, as amended) is amended to read:

11 "6-6-10. VIOLATION OF EXPENSE LIMIT--PENALTY.--[~~Any~~]

12 A. A member of [~~any~~] a board of county  
13 commissioners, [~~or of any~~] a local school board or [~~of any~~] the  
14 governing board or council of any municipality or any other  
15 official who [~~shall violate~~] violates the provisions of  
16 Sections 6-6-7 through 6-6-10 NMSA 1978 [~~shall be deemed~~] is  
17 guilty of a misdemeanor and upon conviction thereof shall be  
18 punished by a fine of not more than five hundred dollars (\$500)  
19 or by imprisonment for not more than six months or both and,  
20 upon conviction under [~~the~~] this section, the position shall be  
21 declared vacant. Any official whose duty it is to allow claims  
22 and issue warrants therefor who issues warrants or evidences of  
23 indebtedness contrary to the provisions of Sections 6-6-7  
24 through 6-6-10 NMSA 1978 shall be liable to [~~his~~] the  
25 official's respective county, school district or municipality

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1 for [~~such~~] the violations, and recovery may be made against the  
2 bondsmen of [~~such~~] that official.

3 B. The attorney general and the district attorney  
4 in the county of jurisdiction have concurrent jurisdiction to  
5 enforce the provisions of this section."

6 Section 3. Section 6-10-53 NMSA 1978 (being Laws 1923,  
7 Chapter 76, Section 31) is amended to read:

8 "6-10-53. BRIBERY--PENALTY.--

9 A. Any person [~~or persons~~] who [~~shall~~] directly or  
10 indirectly [~~pay~~] pays or [~~give~~] gives or [~~offer~~] offers to pay  
11 or give to any one holding the office of state treasurer or the  
12 office of treasurer of any county, city or town or board in  
13 control in this state or to any person [~~or persons~~] under  
14 [~~such~~] those officers' direction for the profit of any such  
15 officer or other person [~~or persons~~] any reward or compensation  
16 either in money or other property or thing of value in  
17 consideration of a loan to or deposit with any such person [~~or~~  
18 ~~persons or body of persons~~], association or corporation of any  
19 public [~~monies~~] money in the custody or under the control of  
20 [~~such~~] the state treasurer or the treasurer of any county, city  
21 or town or board in control or in consideration of any other  
22 agreement or arrangement touching the use of [~~such monies~~] the  
23 money or any part thereof for any purpose not authorized by law  
24 [~~shall be deemed~~] is guilty of a felony and upon conviction  
25 thereof shall be punished by a fine of not more than five

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1 thousand dollars (\$5,000) or by imprisonment for not more than  
2 ten years or both.

3 B. Except as provided in Subsection C of this  
4 section, the attorney general and the district attorney in the  
5 county of jurisdiction have concurrent jurisdiction to enforce  
6 the provisions of this section.

7 C. The attorney general has primary jurisdiction  
8 and is authorized to investigate and prosecute, when  
9 appropriate, officers of the executive and judicial departments  
10 elected on a statewide basis who violate the provisions of this  
11 section; except if the officer is the attorney general, the  
12 governor shall appoint a district attorney or special  
13 prosecutor who may investigate and prosecute the attorney  
14 general. Upon the failure or refusal of the attorney general  
15 to act pursuant to this subsection, the district attorney in  
16 the county where the officer resides or where the violation  
17 occurred may investigate and prosecute an officer for a  
18 violation."

19 Section 4. [NEW MATERIAL] MISUSE OF PUBLIC MONEY--  
20 VIOLATIONS BY STATEWIDE ELECTED OFFICIALS--PRIMARY JURISDICTION  
21 OF ATTORNEY GENERAL.--

22 A. Except as provided in Subsection B of this  
23 section, the attorney general and the district attorney in the  
24 county of jurisdiction have concurrent jurisdiction to enforce  
25 the provisions of Article 8, Section 4 of the constitution of

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1 New Mexico.

2 B. The attorney general has primary jurisdiction  
3 and is authorized to investigate and prosecute, when  
4 appropriate, officers of the executive and judicial departments  
5 elected on a statewide basis who violate the provisions of  
6 Article 8, Section 4 of the constitution of New Mexico; except  
7 if the officer is the attorney general, the governor shall  
8 appoint a district attorney or special prosecutor who may  
9 investigate and prosecute the attorney general. Upon the  
10 failure or refusal of the attorney general to act pursuant to  
11 this subsection, the district attorney in the county where the  
12 officer resides or where the violation occurred may investigate  
13 and prosecute an officer for a violation.

14 Section 5. Section 8-5-3 NMSA 1978 (being Laws 1933,  
15 Chapter 21, Section 3) is amended to read:

16 "8-5-3. ACTION IN CIVIL AND CRIMINAL CASES.--[That]

17 A. Upon the failure or refusal of any district  
18 attorney to act in any criminal or civil case or matter in  
19 which the county, state or any department thereof is a party or  
20 has an interest, or as otherwise provided by law, the attorney  
21 general [~~be, and he~~] is [~~hereby~~] authorized to act on behalf of  
22 [~~said~~] that county, state or [~~any~~] department [~~thereof~~] if  
23 after a thorough investigation such action is ascertained to be  
24 advisable by the attorney general [~~provided that~~].

25 B. The attorney general shall, upon direction of

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1 the governor, investigate any matter [~~or matters~~] in any county  
2 of the state in which the county, state or any department  
3 thereof may be interested. After such investigation, the  
4 attorney general [~~be, and he~~] is [~~hereby~~] authorized to take  
5 such action as in [~~his~~] the attorney general's opinion  
6 conditions warrant. The cost of [~~such~~] the investigation shall  
7 be paid out of the general fund of the county [~~wherein such~~]  
8 where the investigation [~~shall have been~~] was made, and the  
9 costs of any prosecution arising out of [~~such~~] the  
10 investigation shall be paid as are the costs in cases  
11 prosecuted by district attorneys."

12 Section 6. Section 10-16-14 NMSA 1978 (being Laws 1967,  
13 Chapter 306, Section 14, as amended) is amended to read:

14 "10-16-14. ENFORCEMENT PROCEDURES--COMPLAINTS.--

15 A. The secretary of state may refer suspected  
16 violations of the Governmental Conduct Act to the attorney  
17 general, district attorney or appropriate state agency or  
18 legislative body for enforcement. If a suspected violation  
19 involves the office of the secretary of state, the attorney  
20 general may enforce that act. If a suspected violation  
21 involves the office of the attorney general, a district  
22 attorney may enforce that act.

23 B. Violation of the provisions of the Governmental  
24 Conduct Act by any legislator is grounds for discipline by the  
25 appropriate legislative body.

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1           C. If the attorney general determines that there is  
2 sufficient cause to file a complaint against a public officer  
3 removable only by impeachment, ~~[he]~~ the attorney general shall  
4 refer the matter to the house of representatives of the  
5 legislature. If within thirty days after the referral the  
6 house of representatives has neither formally declared that the  
7 charges contained in the complaint are not substantial nor  
8 instituted hearings on the complaint, the attorney general  
9 shall make public the nature of the charges, but ~~[he]~~ the  
10 attorney general shall make clear that the merits of the  
11 charges have never been determined. Days during which the  
12 legislature is not in session shall not be included in  
13 determining the thirty-day period.

14           D. Violation of the provisions of the Governmental  
15 Conduct Act by any public officer or employee, other than those  
16 covered by Subsection C of this section, is grounds for  
17 discipline, including dismissal, demotion or suspension.  
18 Complaints against executive branch employees may be filed with  
19 the agency head and reviewed pursuant to the procedures  
20 provided in the Personnel Act. Complaints against legislative  
21 branch employees may be filed with and reviewed pursuant to  
22 procedures adopted by the New Mexico legislative council.  
23 Complaints against judicial branch employees may be filed and  
24 reviewed pursuant to the procedures provided in the judicial  
25 personnel rules.

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1           E. ~~[Subject to the provisions of]~~ Except as  
2 otherwise provided in this section, the Governmental Conduct  
3 Act may be enforced by the attorney general ~~[Except as regards~~  
4 ~~legislators or statewide elected officials]~~ or a district  
5 attorney in the county where a person resides or where a  
6 violation occurred ~~[may also enforce that act]~~. Enforcement  
7 actions may include seeking civil injunctive or other  
8 appropriate orders."

9           Section 7. Section 10-16-17 NMSA 1978 (being Laws 1993,  
10 Chapter 46, Section 37) is amended to read:

11           "10-16-17. CRIMINAL PENALTIES.--

12           A. Unless specified otherwise in the Governmental  
13 Conduct Act, any person who knowingly and willfully violates  
14 any of the provisions of that act is guilty of a misdemeanor  
15 and shall be punished by a fine of not more than one thousand  
16 dollars (\$1,000) or by imprisonment for not more than one year  
17 or both. Nothing in the Governmental Conduct Act shall  
18 preclude criminal prosecution for bribery or other provisions  
19 of law set forth in the constitution of New Mexico or by  
20 statute.

21           B. The attorney general and the district attorney  
22 in the county of jurisdiction have concurrent jurisdiction to  
23 enforce the provisions of the Governmental Conduct Act."

24           Section 8. Section 13-1-199 NMSA 1978 (being Laws 1984,  
25 Chapter 65, Section 172) is amended to read:

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1 "13-1-199. MISDEMEANOR.--

2 A. Any business or person [~~which~~] that violates the  
3 Procurement Code is guilty of a misdemeanor.

4 B. Except as provided in Subsection C of this  
5 section, the attorney general and the district attorney in the  
6 county of jurisdiction have concurrent jurisdiction to enforce  
7 the criminal provisions of the Procurement Code.

8 C. The attorney general has primary jurisdiction  
9 and is authorized to investigate and prosecute, when  
10 appropriate, officers of the executive and judicial departments  
11 elected on a statewide basis who violate the provisions of the  
12 Procurement Code; except if the officer is the attorney  
13 general, the governor shall appoint a district attorney or  
14 special prosecutor who may investigate and prosecute the  
15 attorney general. Upon the failure or refusal of the attorney  
16 general to act pursuant to this section, the district attorney  
17 in the county where the officer resides or where the violation  
18 occurred may investigate and prosecute an officer for a  
19 violation."

20 Section 9. A new section of Chapter 30, Article 23 NMSA  
21 1978 is enacted to read:

22 "[NEW MATERIAL] VIOLATIONS BY STATEWIDE ELECTED  
23 OFFICIALS--PRIMARY JURISDICTION OF ATTORNEY GENERAL.--

24 A. Except as provided in Subsection B of this  
25 section, the attorney general and the district attorney in the

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1 county of jurisdiction have concurrent jurisdiction to enforce  
2 the provisions of Sections 30-23-1 through 30-23-6 NMSA 1978.

3 B. The attorney general has primary jurisdiction  
4 and is authorized to investigate and prosecute, when  
5 appropriate, officers of the executive and judicial departments  
6 elected on a statewide basis who violate any of the provisions  
7 of Sections 30-23-1 through 30-23-6 NMSA 1978; except if the  
8 officer is the attorney general, the governor shall appoint a  
9 district attorney or special prosecutor who may investigate and  
10 prosecute the attorney general. Upon the failure or refusal of  
11 the attorney general to act pursuant to this section, the  
12 district attorney in the county where the officer resides or  
13 where the violation occurred may investigate and prosecute an  
14 officer for a violation."

15 Section 10. A new section of Chapter 30, Article 24 NMSA  
16 1978 is enacted to read:

17 "[NEW MATERIAL] VIOLATIONS BY STATEWIDE ELECTED  
18 OFFICIALS--PRIMARY JURISDICTION OF ATTORNEY GENERAL.--

19 A. Except as provided in Subsection B of this  
20 section, the attorney general and the district attorney in the  
21 county of jurisdiction have concurrent jurisdiction to enforce  
22 the provisions of Sections 30-24-1 through 30-24-3.1 NMSA 1978  
23 and Article 4, Sections 39 and 40 of the constitution of New  
24 Mexico.

25 B. The attorney general has primary jurisdiction

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1 and is authorized to investigate and prosecute, when  
2 appropriate, officers of the executive and judicial departments  
3 elected on a statewide basis who violate any of the provisions  
4 of Sections 30-24-1 through 30-24-3.1 NMSA 1978 or Article 4,  
5 Sections 39 and 40 of the constitution of New Mexico; except if  
6 the officer is the attorney general, the governor shall appoint  
7 a district attorney or special prosecutor who may investigate  
8 and prosecute the attorney general. Upon the failure or  
9 refusal of the attorney general to act pursuant to this  
10 section, the district attorney in the county where the officer  
11 resides or where the violation occurred may investigate and  
12 prosecute an officer for a violation."

13 Section 11. Section 30-26-1 NMSA 1978 (being Laws 1963,  
14 Chapter 303, Section 26-1) is amended to read:

15 "30-26-1. TAMPERING WITH PUBLIC RECORDS.--

16 A. Tampering with public records consists of:

17 [~~A-~~] (1) knowingly altering any public record  
18 without lawful authority;

19 [~~B-~~] (2) any public officer or public employee  
20 knowingly filing or recording any written instrument, judicial  
21 order, judgment or decree in a form other than as the original  
22 thereof in fact appeared;

23 [~~C-~~] (3) any public officer or public employee  
24 knowingly falsifying or falsely making any record or file,  
25 authorized or required by law to be kept;

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1                   [~~D.~~] (4) any public officer or public employee  
2 knowingly issuing or causing to be issued any false or untrue  
3 certified copy of a public record; or

4                   [~~E.~~] (5) knowingly destroying, concealing,  
5 mutilating or removing without lawful authority [~~and~~] any  
6 public record or public document belonging to or received or  
7 kept by any public authority for information, record or  
8 pursuant to law.

9                   B. Whoever commits tampering with public records is  
10 guilty of a fourth degree felony.

11                   C. Except as provided in Subsection D of this  
12 section, the attorney general and the district attorney in the  
13 county of jurisdiction have concurrent jurisdiction to enforce  
14 the provisions of this section.

15                   D. The attorney general has primary jurisdiction  
16 and is authorized to investigate and prosecute, when  
17 appropriate, officers of the executive and judicial departments  
18 elected on a statewide basis who violate the provisions of this  
19 section; except if the officer is the attorney general, the  
20 governor shall appoint a district attorney or special  
21 prosecutor who may investigate and prosecute the attorney  
22 general. Upon the failure or refusal of the attorney general  
23 to act pursuant to this section, the district attorney in the  
24 county where the officer resides or where the violation  
25 occurred may investigate and prosecute an officer for a

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1 violation."

2 Section 12. A new section of Chapter 30, Article 41 NMSA  
3 1978 is enacted to read:

4 "[NEW MATERIAL] VIOLATIONS BY STATEWIDE ELECTED  
5 OFFICIALS--PRIMARY JURISDICTION OF ATTORNEY GENERAL.--

6 A. Except as provided in Subsection B of this  
7 section, the attorney general and the district attorney in the  
8 county of jurisdiction have concurrent jurisdiction to enforce  
9 the provisions of Sections 30-41-1 and 30-41-2 NMSA 1978.

10 B. The attorney general has primary jurisdiction  
11 and is authorized to investigate and prosecute, when  
12 appropriate, officers of the executive and judicial departments  
13 elected on a statewide basis who violate any of the provisions  
14 of Sections 30-41-1 and 30-41-2 NMSA 1978; except if the  
15 officer is the attorney general, the governor shall appoint a  
16 district attorney or special prosecutor who may investigate and  
17 prosecute the attorney general. Upon the failure or refusal of  
18 the attorney general to act pursuant to this section, the  
19 district attorney in the county where the officer resides or  
20 where the violation occurred may investigate and prosecute an  
21 officer for a violation."

22 Section 13. Section 30-42-5 NMSA 1978 (being Laws 1980,  
23 Chapter 40, Section 5) is amended to read:

24 "30-42-5. ENFORCEMENT AUTHORITY.--

25 A. Except as provided in Subsection B of this

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1 section, the attorney general and the district attorneys of New  
2 Mexico shall [~~each~~] have [~~authority~~] concurrent jurisdiction to  
3 enforce the criminal provisions of the Racketeering Act by  
4 initiating investigations, assisting grand juries, obtaining  
5 indictments, filing informations and complaints and prosecuting  
6 criminal cases.

7 B. The attorney general has primary jurisdiction  
8 and is authorized to investigate and prosecute, when  
9 appropriate, officers of the executive and judicial departments  
10 elected on a statewide basis who violate any of the provisions  
11 of the Racketeering Act; except if the officer is the attorney  
12 general, the governor shall appoint a district attorney or  
13 special prosecutor who may investigate and prosecute the  
14 attorney general. Upon the failure or refusal of the attorney  
15 general to act pursuant to this section, the district attorney  
16 in the county where the officer resides or where the violation  
17 occurred may investigate and prosecute an officer for a  
18 violation."

19 Section 14. Section 30-51-1 NMSA 1978 (being Laws 1998,  
20 Chapter 113, Section 1) is amended to read:

21 "30-51-1. SHORT TITLE.--~~[Sections 1 through 5 of this~~  
22 ~~act]~~ Chapter 30, Article 51 NMSA 1978 may be cited as the  
23 "Money Laundering Act".

24 Section 15. A new section of the Money Laundering Act is  
25 enacted to read:

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1            "[NEW MATERIAL] VIOLATIONS BY STATEWIDE ELECTED  
2 OFFICIALS--PRIMARY JURISDICTION OF ATTORNEY GENERAL.--

3            A. Except as provided in Subsection B of this  
4 section, the attorney general and the district attorney in the  
5 county of jurisdiction have concurrent jurisdiction to enforce  
6 the criminal provisions of the Money Laundering Act.

7            B. The attorney general has primary jurisdiction  
8 and is authorized to investigate and prosecute, when  
9 appropriate, officers of the executive and judicial departments  
10 elected on a statewide basis who violate any of the criminal  
11 provisions of the Money Laundering Act; except if the officer  
12 is the attorney general, the governor shall appoint a district  
13 attorney or special prosecutor who may investigate and  
14 prosecute the attorney general. Upon the failure or refusal of  
15 the attorney general to act pursuant to this section, the  
16 district attorney in the county where the officer resides or  
17 where the violation occurred may investigate and prosecute an  
18 officer for a violation."

19            Section 16. Section 36-1-18 NMSA 1978 (being Laws 1909,  
20 Chapter 22, Section 2, as amended) is amended to read:

21            "36-1-18. DUTIES OF DISTRICT ATTORNEY.--

22            A. Each district attorney shall:  
23                            (1) prosecute and defend for the state in all  
24 courts of record of the counties of [~~his~~] the district  
25 attorney's district all cases, criminal and civil, in which the

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1 state or any county in [~~his~~] the district may be a party or may  
2 be interested, except in those cases where the attorney general  
3 investigates and prosecutes pursuant to the attorney general's  
4 concurrent or primary jurisdictional authority;

5 (2) represent the county before the board of  
6 county commissioners of any county in [~~his~~] the district  
7 attorney's district in all matters before the board whenever  
8 requested to do so by the board, and [~~he~~] the district attorney  
9 may appear before the board when sitting as a board of  
10 equalization without request;

11 (3) advise all county and state officers  
12 whenever requested; and

13 (4) represent any county in [~~his~~] the district  
14 attorney's district in all civil cases in which the county may  
15 be concerned in the supreme court or court of appeals, but not  
16 in suits brought in the name of the state.

17 B. A district attorney may contract with an Indian  
18 nation, tribe or pueblo within the boundaries of the district  
19 attorney's judicial district for the purpose of authorizing the  
20 district attorney or [~~his~~] the district attorney's staff to:

- 21 (1) serve as a tribal prosecutor; or  
22 (2) prosecute alleged violations of tribal  
23 codes by tribal members in tribal courts."